

STATE OF MICHIGAN
COURT OF APPEALS

KUMAR VEMULAPALLI,

Petitioner-Appellant,

v

TOWNSHIP OF FLINT,

Respondent-Appellee.

UNPUBLISHED

March 18, 2003

No. 238033

Michigan Tax Tribunal

LC No. 00-273577

Before: Griffin, P.J., and Neff and Gage, JJ.

PER CURIAM.

Petitioner appeals as of right orders entered by the Michigan Tax Tribunal (MTT) denying motions to set aside a default and dismissal. We affirm.

Petitioner owns commercial property fifty-two percent of which is located in the City of Flint, and forty-eight percent of which is located within respondent's boundaries. Petitioner, acting *in propria persona*, filed a petition challenging the 1999 and 2000 tax values assigned to the property by respondent.

In an order entered on April 11, 2001 the MTT defaulted petitioner based on his failure to arrange a counsel conference and file a summary of the conference as required by 1981 AACRS, R 205.1250 (MTT Rule 250). The order directed petitioner to file a counsel conference summary and a motion to set aside the default within twenty-one days, and advised that failure to comply would result in dismissal of the case. Petitioner, via counsel, moved to set aside the default, alleging that his failure to diligently prosecute the case was due to unfamiliarity with the MTT rules. In an order entered on June 11, 2001 the MTT denied the motion to set aside the default and dismissed the appeal. The MTT noted that petitioner had represented himself in numerous cases before the MTT, that he was familiar with MTT rules, and that he had waited until the last possible day to contact respondent's agent to arrange a counsel conference.

Petitioner filed a second motion to set aside the default and dismissal, alleging that the sanction of dismissal was unduly harsh in light of the fact that respondent hindered his efforts to comply with the April 11, 2001, order. He alleged that his efforts to contact respondent to schedule a counsel conference were rebuffed. In an order entered on October 26, 2001, the MTT denied petitioner's motion to set aside the default and dismissal, stating that it was not persuaded that petitioner contacted respondent's agent in a timely manner to arrange a counsel conference as directed by the April 11, 2001, order.

Our review of a decision of the MTT is limited to determining whether the MTT erred as a matter of law or adopted an erroneous legal principle. We accept the MTT's findings of fact as final if those findings are supported by competent, material, and substantial evidence. *Skybolt Partnership v Flint*, 205 Mich App 597, 599-600; 517 NW2d 838 (1994). We review the MTT's decision to dismiss a case for an abuse of discretion. *Stevens v Bangor Twp*, 150 Mich App 756, 761; 389 NW2d 176 (1986).

Petitioner argues that the MTT abused its discretion by refusing to set aside the default and dismissing the case. We disagree and affirm the MTT's orders. The MTT had the authority to dismiss the case based on petitioner's non-compliance with MTT rules. *Id.* Petitioner has appeared before the MTT in numerous cases, and in some instances has represented himself. The MTT's finding that petitioner was familiar with the MTT's rules was supported by the requisite evidence. *Skybolt, supra*. The MTT's April 11, 2001, order defaulted petitioner for failing to conduct a counsel conference as required by MTT Rule 250. However, petitioner was afforded twenty-one days to conduct a counsel conference and to file a motion to set aside the default. Petitioner did not hold a counsel conference as required, and waited until the last possible day to attempt to schedule a counsel conference. No evidence established that petitioner or petitioner's counsel, who represented petitioner in other matters before the MTT,¹ was prevented from acting in a more timely manner to attempt to schedule the conference. No evidence showed that petitioner's failure was inadvertent or due to circumstances beyond his control. Cf. *Stevens, supra*. Petitioner did not comply with MTT Rule 250 as required by the MTT's April 11, 2001, order, and did not assert an acceptable reason for his continuing refusal to do so. The MTT did not abuse its discretion by denying the motions to set aside the default and dismissing the case. *Kostyu v Dep't of Treasury*, 170 Mich App 123, 131; 427 NW2d 566 (1988); *Stevens, supra*.

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Hilda R. Gage

¹ Counsel represented petitioner in *Vemulapalli v Twp of Flint*, unpublished opinion per curiam of the Court of Appeals, issued November 15, 2002 (Docket No. 233006), petitioner's challenge to the 1995 and 1996 values assigned to his property. Another panel of this Court affirmed the MTT's judgment in respondent's favor.